

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

-----  
KEVIN E. KIRSCH,

Petitioner,

v.

FLORENCE COUNTY SHERIFF, KIM DOE,  
JANE DOE, HEALTH PROFESSIONALS  
LIMITED, FLORENCE COUNTY BOARD OF  
SUPERVISORS and FLORENCE COUNTY,

Respondents.

ORDER

08-cv-631-slc<sup>1</sup>

-----  
Petitioner Kevin Kirsch, a prisoner at the Florence County jail in Florence, Wisconsin, submitted a proposed complaint and motion for temporary restraining order. He also requested leave to proceed in forma pauperis in this case and included a check for \$40 as partial payment of the filing fee. I stayed my decision on petitioner's request in order to allow him an opportunity to submit a trust fund account statement. Instead of filing a trust fund account statement, petitioner has filed a motion I construe as a notice of voluntarily

---

<sup>1</sup>Because Judge Shabaz is on a medical leave of absence from the court for an indeterminate period, the court is assigning 50% of its caseload automatically to Magistrate Judge Stephen Crocker. I am assuming jurisdiction over this case for the sole purpose of issuing this order.

dismissal of his case, as well as a motion for this court to return his \$40 check. Because respondents have not yet filed an answer, plaintiff does not need to obtain leave of court before dismissal. Fed. R. Civ. P. 41(a)(1)(A); see also Szabo Food Service, Inc. v. Canteen Corp., 823 F.2d 1073, 1078 (7th Cir. 1987) (Rule 41(a) "dismissal terminates the case all by itself"). Therefore, petitioner is free to dismiss his case voluntarily, without prejudice to his refiling the complaint at a later date, and I direct the clerk of court to close this case.

With regard to petitioner's \$40 check, it is customary for this court to allow a pro se filer seeking to proceed in forma pauperis to avoid paying the filing fee in a case if he or she voluntarily dismisses the case before submission of an initial partial payment. This commonly occurs when a petitioner submits a trust fund account statement, allowing the court to make a determination on indigency and calculation of the initial partial payment, but then fails to make the initial partial payment by the deadline set out by the court. The court considers the case voluntarily dismissed without the petitioner owing the filing fee. Here, petitioner seeks voluntary dismissal of his case even before proceeding to the court's calculation of an initial partial payment. Therefore I conclude that petitioner does not owe the filing fee in this case, and I will grant his motion for return of his \$40 check.

ORDER

IT IS ORDERED that petitioner Kevin Kirsch's motion for return of his \$40 check is GRANTED. The clerk of court is directed to return his check and close this case.

Entered this 21<sup>st</sup> day of November, 2008.

BY THE COURT:

/s/

---

BARBARA B. CRABB  
District Judge